

§ 891.100

24 CFR Ch. VIII (4–1–99 Edition)

- 891.715 Maximum annual commitment and project account.
- 891.720 Leasing to eligible families.
- 891.725 PAC administration.
- 891.730 Default by Borrower.
- 891.735 Notice upon PAC expiration.
- 891.740 Responsibilities of Borrower.
- 891.745 Replacement reserve.
- 891.750 Selection and admission of tenants.
- 891.755 Obligations of the family.
- 891.760 Overcrowded and underoccupied units.
- 891.765 Lease requirements.
- 891.770 Termination of tenancy and modification of lease.
- 891.775 Security deposits.
- 891.780 Adjustment of rents.
- 891.785 Adjustment of utility allowances.
- 891.790 Conditions for receipt of vacancy payments for assisted units.

AUTHORITY: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

SOURCE: 61 FR 11956, Mar. 22, 1996, unless otherwise noted.

Subpart A—General Program Requirements

§ 891.100 Purpose and policy.

(a) *Purpose.* The Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities provide Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811), respectively, for housing projects serving elderly households and persons with disabilities. Section 202 projects shall provide a range of services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are provided with any necessary supportive services that address their individual needs.

(b) *General policy.* (1) *Supportive Housing for the Elderly.* A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 202 (12 U.S.C. 1701q(b)).

(2) *Supportive Housing for Persons with Disabilities.* A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 811 (42 U.S.C. 8013(b)).

(c) *Use of capital advance funds.* No part of the funds reserved may be transferred by the Sponsor, except to the Owner caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a commitment for capital advance funding.

(d) *Amendments.* Subject to the availability of funds, HUD may amend the amount of an approved capital advance only after initial closing has occurred.

§ 891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§ 891.205, 891.305, and 891.505, as applicable.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors (or of a single Borrower or of Borrowers, as applicable) that have any identity of interest themselves or their principals.

Annual income is defined in part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

Household (eligible household) means an elderly or disabled household (as defined in §§ 891.205 or 891.305, respectively), as applicable, that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed,

rehabilitated, or acquired as permanent residences for use by elderly or disabled households, as applicable. The term includes necessary community space. Except for intermediate care facilities for individuals with developmental disabilities, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities. For the Loans for the Elderly and Persons with Disabilities Program, see § 891.505.

Low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

National Sponsor means a Sponsor that has one or more Section 202 or one or more Section 811 project(s) under reservation, construction, or management in two or more different HUD geographical regions.

Operating costs means HUD-approved expenses related to the provision of housing and includes:

- (1) Administrative expenses, including salary and management expenses related to the provision of shelter and, in the case of the Section 202 Program, the coordination of services;
- (2) Maintenance expenses, including routine and minor repairs and groundskeeping;
- (3) Security expenses;
- (4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. The term “*operating costs*” excludes telephone services for households;
- (5) Taxes and insurance;
- (6) Allowances for reserves; and
- (7) Allowances for services (in the Section 202 Program only).

Project rental assistance contract (PRAC) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

Project rental assistance payment means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a house-

hold occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a “vacancy payment,” may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC.

Rehabilitation means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration, or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement Reserve Account means a project account into which specified funds are deposited. Such funds may be used only with the approval of the Secretary for repairs, replacement, and capital improvements to the project.

Section 202 means section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended, or the Supportive Housing for the Elderly Program authorized by that section.

Section 811 means section 811 of the National Affordable Housing Act (42 U.S.C. 8013), as amended, or the Supportive Housing for Persons with Disabilities Program authorized by that section.

Start-up expenses mean necessary costs (to plan a Section 202 or Section 811 project, as applicable) incurred by the Sponsor or Owner prior to initial closing.

Tenant payment to Owner equals total tenant payment less utility allowance, if any.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility allowance is defined in part 813 of this chapter and is determined or approved by HUD.

Very low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

§ 891.110 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will separately allocate the amounts available for capital advances for the development of housing for elderly households and for disabled households, less amounts set aside by Congress for specific types of projects, and for amendments of fund reservations made in prior years, for technical assistance, and for other contracted services.

§ 891.115 Notice of funding availability.

Following an allocation of authority under § 891.110, HUD shall publish a separate Notice of Funding Availability (NOFA) for the Section 202 Program of Supportive Housing for the Elderly and for the Section 811 Program of Supportive Housing for Persons with Disabilities in the FEDERAL REGISTER. The NOFAs will contain specific information on how and when to apply for the available capital advance authority, the contents of the application, and the selection process.

§ 891.120 Project design and cost standards.

In addition to the special project standards described in §§ 891.210 and 891.310, as applicable, the following standards apply:

(a) *Property standards.* Projects under this part must comply with HUD Minimum Property Standards, unless otherwise indicated in this part.

(b) *Accessibility requirements.* Projects under this part must comply with the Uniform Federal Accessibility Standards (See 24 CFR 40.7 for availability), section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR part 8), and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100. For the Section 811

Program of Supportive Housing for Persons with Disabilities, see additional accessibility requirements in § 891.310(b).

(c) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas, jacuzzis, and dishwashers, trash compactors, and washers and dryers in individual units in supportive housing for the elderly or in independent living facilities for persons with disabilities. Sponsors may include certain excess amenities but they must pay for them from sources other than the section 202 or 811 capital advance. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the Section 202 or 811 project rental assistance contract.

(d) *Smoke detectors.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

§ 891.125 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 (27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652); as amended by Executive Order 12259, (46 FR 1253, 3 CFR, 1980 Comp., p. 307)); section 504 of the Rehabilitation Act of 1973, and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority concentration (or minority elderly concentration under the Section 202 Program) except as permitted under paragraph (c)(2) of this